Supreme Court, U.S.
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No. 87-1046

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RONALDO P. RODRIGUES,
Petitioner,

v.

MARTIN MARIETTA CORPORATION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF IN OPPOSITION

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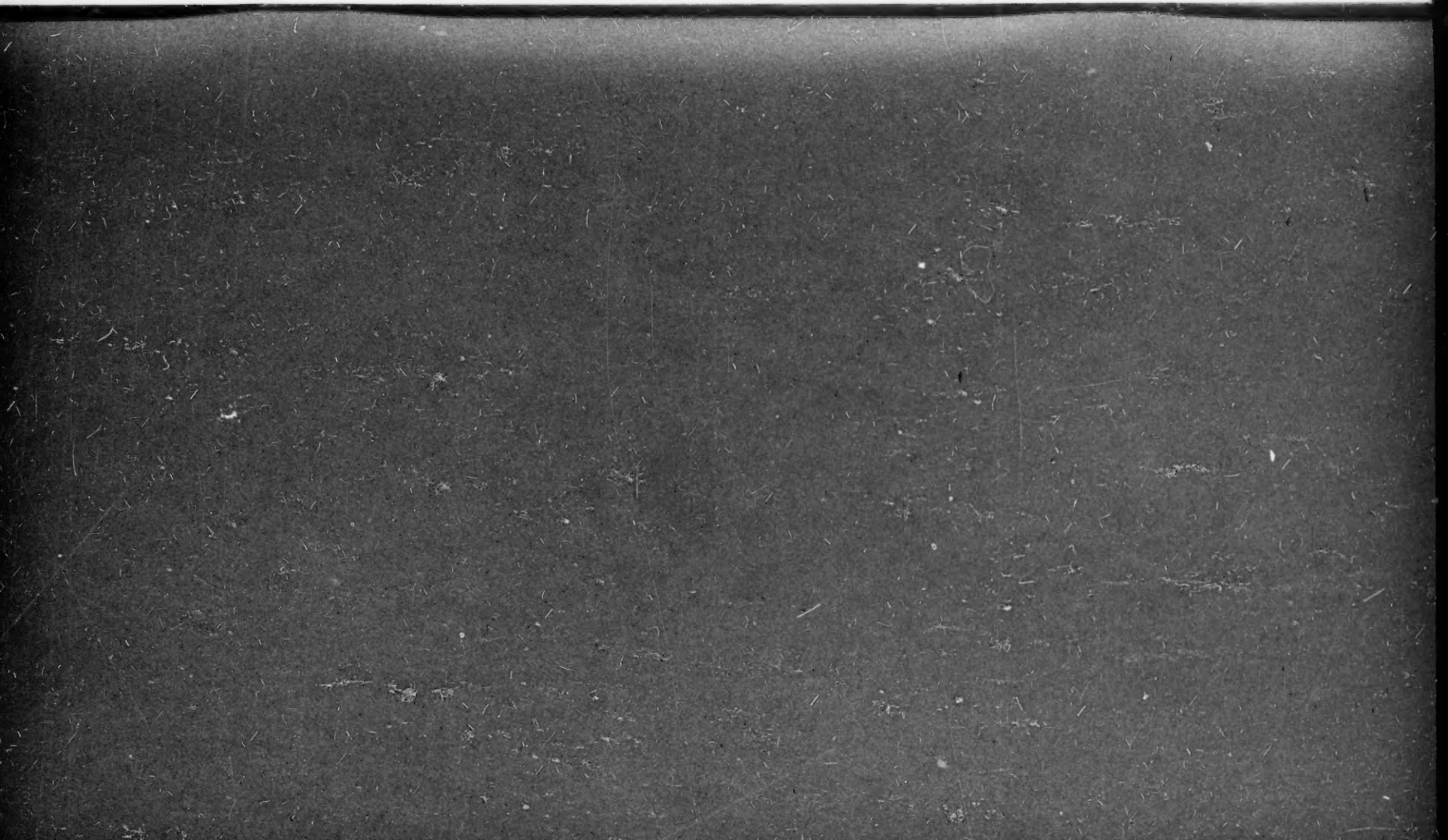

QUESTIONS PRESENTED

Did the District Court err in holding, and the Court of Appeals err in affirming, that based upon undisputed facts, Petitioner, as a Brazilian citizen employed to work in Brazil, was not entitled to relief under the Civil Rights Act of 1964 (42 U.S.C. § 2000e-1), under the Civil Rights Act of 1870 (42 U.S.C. § 1981), or under the Employee Retirement Income Security Act (29 U.S.C. § 1140) (hereinafter referred to as "ERISA")?

Did the District Court err in holding, and the Court of Appeals err in affirming, that Petitioner did not have a contract entitling him to "foreign service benefits" where Petitioner admitted that he had no such contract?

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BRIEF IN OPPOSITION

STATEMENT

Petitioner Ronaldo P. Rodrigues was a Brazilian citizen who, for more than seven years, worked in Brazil for a wholly owned Brazilian subsidiary of Martin Marietta. Following the termination of his employment, Petitioner filed lawsuits in both Brazil and the United States in which he alleged his entitlement to additional employment benefits. The undisputed facts, which were contained in plaintiff's own deposition testimony, are as follows:

1. Petitioner is a Brazilian citizen who sought employment with the Master Builders Division of the Mar-

tin Marietta Corporation ("Master Builders") in 1975. Petitioner signed a sworn employment application in which he applied for a sales position "in Brazil" and listed his Rio de Janeiro address as his permanent address. (Employment Application, Appendix at 1a.) Petitioner's resume stated that he was "born and brought up in Rio" and that he had two children "who are now living in Brazil with my parents" (Resume, Appendix at 6a).

2. Petitioner was hired by Master Builders in October of 1975 with the understanding that he would be employed in Brazil. Before beginning his Brazilian employment, Petitioner was trained in Cleveland, Ohio for approximately nine months (Per Curiam Opinion, Petitioner's Appendix at A-70).

3. During his training period in Cleveland, Petitioner received the same benefits as all other Cleveland employees (Per Curiam Opinion, Petitioner's Appendix at A-78).

4. In June of 1976 Petitioner began his employment with "Rioquima S.A." ("Rioquima"), a Brazilian corporation which was a subsidiary of Martin Marietta.[1] At all times thereafter, Petitioner received his paycheck from the Brazilian entity and was paid entirely in Brazilian currency (District Court Memorandum and Order, Petitioner's Appendix at A8-9).

5. When Petitioner began his employment in Brazil, an employee of the personnel department of Rioquima explained the benefits which he would receive as an em-

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[1] In Brazil, Petitioner was initially employed by Rioquima S.A., a Brazilian corporation. In 1983, a portion of the Rioquima business was sold and the remaining business, which employed the appellant, was separately incorporated in Brazil as "Master Builders do Brasil". Although the corporate identity changed, Petitioner's employment in Brazil was not interrupted (Memorandum and Order, Petitioner's Appendix at A8-9).

ployee of the Brazilian entity (Pl. Depo. at 23 and 24, Appendix at 8a).

6. While employed in Brazil, Petitioner received the same benefits as all of the higher level personnel employed by the Brazilian entity (Pl. Depo. at 30, Appendix at 9a).

7. During his early years of employment in Brazil, Petitioner knew or should have known that the rules applicable to U.S. employment did not apply to his employment in Brazil. His benefit system was fully explained to him as soon as he arrived in Brazil. (Pl. Depo. at 23-24, Appendix at 8a). Moreover, Petitioner received a letter from the Master Builders Group Vice President-Latin America, dated March 22, 1978 (Pl. Depo. at 54), which specifically stated that "Brazil does not fall under the domestic rules including rewards, . . ." (See Letter of March 22, 1978, Appendix at 10a).

8. Petitioner continued his employment with Rioquima (and then with Master Builders do Brasil) until February of 1984. Toward the end of his tenure, the operation for which Petitioner had been responsible began to lose money (Per Curiam Opinion, Petitioner's Appendix at A-71).

9. As a result of his operation's sagging sales and shrinking revenues, Petitioner's employment was terminated in February of 1984 (Per Curiam Opinion, Petitioner's Appendix at A-71).

10. Following his termination, Petitioner sued his Brazilian employer in a Brazilian court of law and received a settlement of approximately $18,000 for all claims under "the contract of work in Brazil" (Per Curiam Opinion, Petitioner's Appendix at A-71).

11. In June of 1984 Petitioner returned to the United States and embarked on an investigation of Martin Marietta's U.S. benefits. At that time he learned that

Martin Marietta's Master Builders Division had maintained a foreign services policy during the Petitioner's years of employment (Memorandum and Order, Petitioner's Appendix at A62-64). Pursuant to the terms of the policy in effect when Petitioner began his Brazilian employment, foreign service benefits were not available to any person working in his home country (Policy, Appendix at 12a-21a).[2]

12. Part of the Petitioner's "investigation" included a review of benefits under the Martin Marietta Corporation's Pension Plan for Salaried Employees (the "Plan"). Although Petitioner was covered by the Plan during his training period, he properly ceased to participate in the Plan, once he was employed by Rioquima; Rioquima was not an "Employing Company" under the Plan (Niznik Affidavit ¶ 3 and ¶ 4, Appendix at 22a-23a).

SUMARY OF ARGUMENT

Martin Marietta Corporation ("Martin Marietta") pays "foreign service benefits" to a handful of employees who are requested to temporarily work outside of their home country by Martin Marietta. The Petition for a Writ of Certiorari is premised on the contention that the Petitioner should be entitled to receive "foreign service benefits" from Martin Marietta even though he is a Brazilian citizen who was employed to work in Brazil. Although Petitioner has been unable to name a single employee of Martin Marietta who was paid "foreign service benefits" while working in his country of citizenship, Petitioner claims that Martin Marietta's failure to pay "foreign service benefits" violated Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000 *et seq.*), the

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[2] As is obvious from his own Petition for a Writ of Certiorari, Petitioner has failed to name a single individual who has ever been paid foreign service benefits while working in his own country of citizenship.

Civil Rights Act of 1870 (42 U.S.C. § 1981) and ERISA (29 U.S.C. § 1140).

Petitioner's claims are entirely unfounded under the relevant statutes and law. Title VII specifically excludes the employment of aliens who work in foreign countries from its coverage. (42 U.S.C. § 2000(e)(1)). Similarly, Section 1981 specifically limits its protection to persons within the jurisdiction of the United States and is not intended to have extra-territorial effect. Because ERISA does not contain any provision which prohibits discrimination on the basis of alienage, Petitioner has consistently failed to state any claim under ERISA.

As discussed below, the Sixth Circuit Court of Appeals applied the applicable statutes in accordance with their provisions and has soundly rejected all of plaintiff's claims. (See the Per Curiam Opinion of the Sixth Circuit, Petitioner's Appendix at A69-A80.) No reason exists for disturbing the decision rendered by the United States District Court for the Northern District of Ohio and the United States Court of Appeals for the Sixth Circuit.

ARGUMENT

I. THE CASE WAS CORRECTLY DECIDED UPON WELL SETTLED PRINCIPLES OF LAW BY THE COURTS BELOW

Throughout this litigation, Petitioner's claims have been confused and extremely difficult to understand.[3] Despite Plaintiff's failure to articulate his claims with any precision, both the district court and the Sixth Circuit have attempted to identify and review each of the

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[3] Petitioner has continuously changed his claims and legal theories at each successive stage of the litigation. For example, after summary judgment was granted by the District Court, Petitioner attempted, for the first time, to raise entirely unsupported allegations of fraud.

Petitioner's theories of liability. After careful examination, the lower courts properly decided that the Petitioner's claims for relief were ill-conceived and unfounded. Indeed the Sixth Circuit held that all but one of the Petitioner's many claims lacked "even arguable merit." (Per Curiam Opinion at 5, Petitioner's Appendix at A-76).

Essentially, the Petitioner asked the lower courts to ignore the clear language of Title VII and to modify the long-established principle that United States labor laws will not be given extra-territorial application by the judiciary. *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963); *Cleary v. United States Lines, Inc.*, 728 F.2d 607 (3d Cir. 1984). Both of the lower courts properly declined this invitation, in light of applicable statutory language and precedent established by this Court. This Court has long held that it will not extend United States employment law to aliens who work in foreign countries, without a clear "mandate" of Congress. *Foley Bros., Inc. v. Filardo*, 336 U.S. 281 (1949).

In the present case, none of the statutes at issue contain such a "mandate". To the contrary, Section 702 of Title VII specifically excludes aliens who work abroad from its coverage:

> This title shall not apply to an employer with respect to the employment of aliens outside any State . . . 42 U.S.C. § 2000e-1.

Similarly, Section 1981 (42 U.S.C. § 1981) limits its application to "persons within the jurisdiction of the United States." For these reasons the lower courts properly determined that the statutes did not apply to extra-territorial aliens.

There is no conflict between decisions of the courts of of appeal or decisions of this Court and the decision below. The principles governing this action have been long established and consistently applied. The courts below

adhered to these principles and did not depart in any way "from the accepted and usual course of judicial proceedings." U.S. Sup. Ct. Rule 17, 28 U.S.C.

II. THIS CASE WAS PROPERLY DECIDED ON ITS OWN FACTS

Petitioner seeks to circumvent the clear language of the applicable statutes[4] by attempting to link his Brazilian employment with his training period in Cleveland. However, the Sixth Circuit Court of Appeals rejected Petitioner's claim, based upon the undisputed facts of the case. The Court of Appeals opined:

> Rodrigues cannot claim protection under section 1981 because he was not within the jurisdiction of the United States at the time of the alleged discrimination, during his employment in Brazil. While he was within the jurisdiction of the United States, Rodrigues received the same employment benefits enjoyed by United States citizens under the same type of contract.

Similarly, the finding that Petitioner did not have a "contract" for "foreign service benefits" was based upon the undisputed fact that the parties did not negotiate any agreement to pay such benefits. Indeed "foreign service benefits" were never even mentioned to the Petitioner.[5]

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[4] As pointed out above, Petitioner's ERISA claim fails to state a claim. At the time of his discharge, Petitioner "was not a participant in any pension plan subject to ERISA." (Per Curiam Opinion at Pg. 4, Petitioner's Appendix at A75). The District Court opined that Petitioner's ERISA claim "does not clearly implicate any cause of action" and stated further that the claim is "practically impossible to comprehend." (Memorandum and Order, Petitioner's Appendix A37-38.)

[5] In fact, with respect to the contract issue, Petitioner's own testimony establishes the fact that "foreign service benefits" were not part of his employment contract. He testified:

> There was no specific contract. There was a contract that I was getting paid every month by the company in Brazil, but

Although, Petitioner is dissatisfied with the outcome of his case, these findings, which were based upon undisputed facts, are of interest only to the parties to this dispute and do not merit review by this Court.

III. THIS CASE POSES NO OVERRIDING ISSUES MEET FOR CONSIDERATION BY THIS COURT

Petitioner's claim that the legal issues in this case have not been addressed by this Court is simply incorrect. Although Petitioner claims that his case presents issues of "national importance," the facts of his case do not support such a claim.[6] Rather, Petitioner has been unable to articulate any reasonable basis for his claim that he should be entitled to "foreign service benefits" during the time when he worked in his own country.

Both Congress and this Court have made it clear that they will not attempt to regulate the employment of aliens outside of United States borders. As the Sixth Circuit quite properly held:

> In the absence of any interpretation of congressional intent that would lend credence to such a result, we believe the clear bar to the extra-territorial application of section 1981, Title VII, and other anti-discrimination laws should prevail.

In enacting Section 2000e-1 of the Civil Rights Act of 1964, Congress clearly considered the fact that aliens are employed by United States corporations outside of the borders of the United States. The language of the statute demonstrates that Congress made the decision that such

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with total control of the American company every time I had a raise it would have to be approved by the company in Cleveland. That was the contract I understood existed between us. (Pl. Depo. at 77.)

[6] Contrary to Petitioner's claim, the case of *Bourselan v. Aramco*, 653 F. Supp. 629 (S.D. Tex. 1987) does not have any applicability to the present case because it deals with the rights of a U.S. citizen who was employed abroad.

individuals would not be covered under Title VII.[7] Petitioner now seeks to challenge this Congressional policy with the vague and unsupported assertion that "fundamental fairness" dictates a review of the decision of the Sixth Circuit Court of Appeals. Because Petitioner's claim is patently frivolous, it must be rejected.

CONCLUSION

The decisions of the District Court for the Northern District of Ohio and the Court of Appeals for the Sixth Circuit correctly applied established principles of law. There is no unresolved question of importance in this case which merits this Court's time and attention. For the foregoing reasons, it is respectfully submitted that the Petitioner in this case has demonstrated none of the grounds set forth in Rule 17 of this Court for the granting of a Writ of Certiorari. Accordingly, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Of Counsel:
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Materials Group
Martin Marietta Corporation
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Bethesda, Maryland 20817

KATHLEEN B. BURKE *
BARBARA J. LEUKART
JONES, DAY, REAVIS & POGUE
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Cleveland, Ohio 44114
(216) 586-3939
Attorney for Respondents
* Counsel of Record

January, 1988

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[7] Section 1981 also limits its coverage to "persons within the jurisdiction of the United States."

APPENDIX

APPENDIX

You are advised that an inquiry may be made into your background. Upon written request, additional information as to the nature and scope of the report, if one is made, will be provided.

Applicants are not required to give any information on this form that is prohibited by Federal, State or Local Law.

APPLICATION FOR EMPLOYMENIT

Date June 13, 1975

1) Name Ronaldo Pergira Rodrigues
   Home Telephone 261-0394

2) Present Address 24455 Lakeshore Blvd. Apt. 614 Euclid-Cuy, Ohio 44123

3) Permanent Address Rua Sao Salvador, N. 24 Apt. 1103, Lamengo-Riode Janeiro, Brasil

4) Position applied for Sales in Brazil
   Soc. Sec. No. 414-74-3705
   Are you willing to relocate? Yes

5) In Case of Emergency Notify—
   Name Gen. José Araken Rodrigues—Father
   Address Rio de Janeiro—Brazil
   Phone 245-9352

6) High School: Name Anglo-American School
   City Rio de Janeiro—Brazil
   Highest Grade Completed (Circle) 9 10 11 (12)
   Date Completed 1962
   Did you graduate? Yes

7) College or Colleges: Major course(s) Business Management and courses in Mechanic & Tech.

Degree(s) Associate in Arts and Associate in Science (Business Man.).

Name Cuyahoga Community College

Location Cleveland, Ohio

Name Cleveland State University (Present)

Location Cleveland, Ohio

Highest Year Completed (Circle) 13 14 (15) 16 17 18 19

Date Completed 1974 Degree ASA AS

8) Other Schools Attended Automation Institute

Years 1965/1966

Presently enrolled in this College of Business Administration at Cleveland State University with a Major in International Business Management, 143 hours completed —— B.B.

Graduate in June '76

9) U.S. Military Service: (Check here if none (✓))
Present Draft Status 3-A

Branch of Service —— Dates: From —— To ——

Highest Rank ———— Reserve Status ————

10) Personal References: Please list names of two references (not relatives or employers).

Name Mr. William Urso

Occupation Eng. at General Electric

Address ————————

Tel. No. 944-0219 (home)

Name Mr. Richard Donavan

Occupation Eng. at Lewis Reach. Center

Address ————————

Tel. No. 777-2774 (home)

Work Experiences

11) Present or Last Employer Euclid Inc. (White Motors (——)

Address 22221 St. Clair Ave., Euclid, Ohio

Employed from 01/1970 to now

Reason for Leaving ————————

Final Salary $16,000.00 last year includes O/T.

Supervisor's Name and Title Mr. Jess Wilson (Parts Whare. Supt.)

Your Job Title and Duties after 3½ years at the machine shop transfer for the Parts-Service Dept. ————————

Products Sold Off-Highway Trucks and Construction Equipment.

12) Previous Employer Lucas Machine Company

Address Kirby Road, Cleveland, Ohio

Employed from 01/1966 to 01/1970

Reason for Leaving Better job.

Final Salary $10,000.00

Supervisor's Name and Title ————————

Your Job Title and Duties Operated various types of machines in the machine shop.

Products Sold Boring mills, machine tools.

13) Previous Employer Square D Company

Address ————————, Cleveland, Ohio

Employed from 1965 to 1966

Reason for Leaving Better job.

Final Salary $————————

Supervisor's Name and Title ————————

Your Job Title and Duties General maintenance.

Products Sold Control boxes (electrical equipment)

14) Previous Employer Ohio Inspection Bureau

Address Cleveland, Ohio

Employed from 01/1965 to 08/1965

Reason for Leaving New job.

Final Salary $200-300/mo.

Supervisor's Name and Title ————————

Your Job Title and Duties Office and mail clerk.

Products Sold Insurance company.

I certify that the answers given by me to the questions on this application are true to the best of my knowledge.

/s/ Ronaldo P. Rodrigues
(Applicant's Signature)

RESUME

Ronaldo P. Rodrigues
24455 Lake Shore Boulevard, Apt. 614
Euclid, Ohio 44123
Phone: 261-0394

Personal: Divorced, 5'8", 170 lbs., 31 years old

Education:

Junior High—Anglo American School—1955/1959 (Colegio Anglo American) Rio de Janeiro—Brazil

Senior High—Anglo American School—1959/1962 (Colegio Anglo American) Rio de Janeiro—Brazil

Degree: Senior High School (Scientific)

Business School—Automation Institute—1965/1966 Cleveland, Ohio

Courses: Operating and wiring IBM data machines

College: Cuyahoga Community College—1971-1974 Cleveland, Ohio

Degrees: Associate in Arts and Associate in Science—with a concentration in Business Management and courses on Mechanic Technology

University: Cleveland State University—1974/1975 Presently enrolled in the College of Business Administration with a Major in International Business Management, 143 credit hours completed towards my B.B.A.

Work Experience:

1965 Ohio Inspection Bureau, Cleveland, Ohio

Office and mail clerk

Business: Insurance Company

1965 to 1966—Square D Company, Cleveland, Ohio

Maintenance Department

Business: Control boxes (electrical equipment)

1966 to 1970—Lucas Machine Company, Cleveland, Ohio

Machinist—Operated various types of machines in the Machine Shop

Business: Boring mills, machine tools.

1970 to present—Euclid, Inc., Cleveland, Ohio

Business: Off-highway Trucks and construction equipment

3½ years—Machine Shop (111)

over 1½ years—Parts Department (027)

Military Service:

Brazil—Reserve

United States—Present draft status 3A classification on the Selective Service.

Background:

Born and brought up in Rio de Janeiro, Brazil, where I attended school up to the 12th grade. While in school, I was an active member of the Y.M.C.A. in Rio and the Brazilian Boys Scouts. Left Brazil at the age of 19 to come to the United States as a student and later applied for a immigration visa.

Married in 1963 in the United States, divorced in 1972 with custody of my children, both born in the United States. Regina—11 and Ricardo 8, who are now living in Brazil with my parents. Have traveled extensively between Brazil and the United States in the last 10 years.

Family:

Father: General Jose Araken Rodrigues—retired Brigadier General in the Brazilian Army, a career officer for 25 years and for the past 8 years, General Co-ordinator of Brazil's Food for Development program under an agreement USAID/FFD throughout Brazil.

Mother: Deborah P. Rodrigues—Executive bi-Lingual, English-Portuguese, Secretary. She has worked for over 30 years as a Free-lance Secretary with many foreign companies in Brazil and also for the U.S. Government in Rio de Janeiro.

Brother: Ricardo P. Rodrigues—a student at the University in Rio (Mechanical Engineering).

Interests:

Since my field in school, International Business, relates in many ways to the present economic situation of Brazil, I am very involved in collating information and facts about Brazil's economy.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 84-3387

Judge Aldrich

RONALDO P. RODRIGUES,
Plaintiff,

vs.

MARTIN MARIETTA CORPORATION
MASTER BUILDERS DIVISION, *et al.*,
Defendants.

Deposition of RONALDO P. RODRIGUES, Plaintiff, called by the Defendant for the purpose of adverse party examination before Claudine Kelly, a Notary Public within and for the State of Ohio, at the offices of Jones, Day, Reavis & Pogue, 1700 Huntington Building, Cleveland, Ohio, at 10:05 a.m., Thursday, January 31, 1985, pursuant to notice.

* * * *

Q. Who explained to you what employment benefits you were going to get when you were in Brazil?

A. Just after I arrived there there was a normal innovation. I have never worked in Brazil before. I have never worked for anyone else in Brazil but Master Builders. So Rioquima had a Personnel Department that took care of all the necessary documentations and I was given the explanation of what I was going to get.

Q. Do you remember who it was in the Rioquima Personnel Department?

A. No. It was the Personnel Department.

* * * *

Q. Can we agree that the higher levels of Rioquima all got the same coverage?

A. As far as insurance. There were other benefits there, but as far as health insurance and life insurance, I'll say, yes.

Q. As far as you know you got the same benefits as the other higher level Rioquima employees?

A. Right. It was called the Executive Plan.

Q. You got everything that they were offering under the Rioquima Executive Plan?

A. Right.

Q. The Executive Plan was explained to you when you arrived by someone in Rioquima's Personnel Department?

A. Well, there was a plan that they put me on and every time there was a change, either through another company or a change in benefits up or down—

Q. They would let you know?

A. There was a circulated letter with our names on it that was passed around. That's how I was informed.

* * * *

10a

MASTER BUILDERS
Division of Martin Marietta Corporation
Cleveland, Ohio 44118

INTER-OFFICE CORRESPONDENCE

Date March 22, 1978

To Ronaldo Rodrigues From G. J. Tazelaar

Office Brazil Office Cleveland

Subject Master Marketer

Dear Ronaldo:

Although Brazil does not fall under the domestic rules including rewards, I have some very important news for you. For one, to add yet an extra incentive to your fine work in Brazil, it has been decided that you can qualify for the Master Marketer Program of 1979. I am enclosing some of the criteria necessary to meet, in making this select group. However, your objective will be a very simple one. If you bring Master Builders Division—Rioquima S.A. to double its budgeted profits, meaning to say that at December, we will find on our books, 1,102,-000, cruzeiros in the profit column (pre-tax) then you and your wife will be invited to come to our Master Marketer meeting. Should you be wishing to go from that town on a vacation, feel free to do so. I am certainly betting that you and Tanya will be making this meeting and I also feel sure that the objective is not exceeding your ability.

As you may recall, we have set ourselves to a very tight budget, expense wise, but on sales and looking at the last three months, you'll have a fair chance to make that. However, just to pay on sales alone would not be fair in the face of so many other criteria, bringing our humbly assigned profit to twice what was budgeted is an attainable goal. I hope we will be seeing you there. Inciden-

tally, this is in addition to your normal 5.3% commission, as well as any other Brazilian benefits you now enjoy.

The location of the new Master Marketer shindig is not known as yet, but is usually held in a very fine resort, with all expenses paid. I really am banking on the fact that you will be making it, and wishing you the best of success in 1978.

Yours truly,

/s/ George J. Tazelaar
GEORGE J. TAZELAAR
Group Vice President
Latin America

GJT:cb
attachments

cc: P. F. Gutmann
R. H. MacDonald

ORGANIZATION AND POLICY MANUAL
PART XIV—FOREIGN SERVICE

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SECTION 1—PURPOSE AND SCOPE

A. The purpose of this policy is to assist in the administration of compensation for employees assigned to locations outside their home country. The objective is to provide proper and equitable compensation to:

1) motivate qualified employees to work in areas outside their home country,

2) minimize the effect on employees of differences in living costs, housing, tax rates, etc. in the various countries to which assigned,

3) minimize the difficulty of transferring employees back to the home country or to other foreign assignments in other parts of the world.

B. This policy applies to employees of Master Builders Division and Master Builders Co., Ltd. (Canada) who are transferred from their home country to a foreign location in another continent. It does not apply to third country nationals, that is, employees hired in a country other than the United States or Canada and transferred to another country.

SECTION 2—BASE SALARY

A. The base salary of foreign service employees shall be determined by salaries paid for comparable positions, with similar responsibilities and authority, in the home country.

B. Salary increases will be administered in accordance with the compensation policy of the Company and will require the same approvals.

SECTION 3—FOREIGN SERVICE ALLOWANCES

A. In addition to base salary a foreign service employee shall receive:

1) a foreign assignment allowance,

2) a cost of living allowance, and

3) a housing allowance,

provided, the location and living conditions of the foreign assignment warrants.

B. The foreign assignment allowance shall vary from 10 to 25% of base salary depending on the location of the assignment, to compensate the foreign service employee for living abroad, conducting business in an unfamiliar environment where a foreign language is prevalent, separation from home community and living in a different cultural setting.

C. The cost of living allowance is to compensate the foreign service employee for the higher cost of living at the location of foreign assignment than prevails in the U.S. No allowance will be paid for any location where the cost of living is equal to or less than the U.S.

D. The Local Index of the U.S. Department of State Index of Living Costs Abroad (Excluding Quarters) will be used to determine the percentage of cost of living allowance for each location of foreign assignment. This percentage will be applied to the base salary to determine the cost of living allowance. (The U.S. Department of State Index uses the cost of living in Washington, D.C. at 100%.)

E. The housing allowance is to compensate the foreign service employee for the higher costs of housing at the location of foreign assignment than prevails in the U.S. No allowance will be paid for any location where the cost of housing (as determined in paragraph F) is equal to or less than the U.S.

F. The U.S. Department of State Index of Quarters Allowance Abroad will be used to determine the cost of living quarters for each location of foreign assignment. This index includes the cost of rent, heat, light, fuel, gas, electricity, water and taxes required by local law or cus-

tom to be paid by the tenant. This index will be increased by 10%. From that total will be deducted 15% of the base salary, which is the average rental expense in the U.S. including utilities. The difference, if any, is the housing allowance.

SECTION 4—TAX EQUALIZATION ADJUSTMENT

A. The foreign service employee is responsible for paying his local income and other taxes. The Company recognizes, however, that taxes vary widely in foreign countries and may be more or less than U.S. taxes. It is the Company's intent that the foreign service employee neither gains nor loses as a result of foreign taxes.

B. To compensate the foreign service employee, to the extent possible, for higher taxes in a foreign country, the tax liability in the foreign country will be determined using base salary plus foreign service allowances referred to in Section 3. The U.S. tax liability on base salary only will be determined using the standard deduction of 10% and dependency exemptions as allowed. The difference between the foreign and U.S. taxes will be the Tax Equalization Adjustment. If the U.S. taxes are greater than the foreign taxes, no adjustment is required.

SECTION 5—EDUCATION ASSISTANCE

A. The purpose of this provision is to assist the foreign service employee in obtaining for his dependent children the equivalent of elementary and high shcool education comparable to that available free to his home country. It is not the Company's intent to enable the employee to select the best possible school for his child at Company expenses, but to provide only assistance necessary to offset additional expenses occasioned by the employee in foreign service.

B. When comparable schools are not available free at the location of assignment, reimbursement is provided

up to a maximum of $1,800 per child for each school year for enrollment, tuition and transportation. Expenses incurred for books, uniforms, special courses, supplies and equipment will not be reimbursed, as such items are considered normal school expenses.

C. Educational assistance is payable only until the child has completed high school (12th grade) or its equivalent, but in no event beyond the end of the school year during which the child attains the age of 19.

D. Education assistance is payable only for a student whose residence is with the foreign service employee at his place of assignment.

SECTION 6—VACATION—HOME LEAVE

A. A foreign service employee will receive a vacation or home leave of four weeks during each calendar year. Vacation or home leave may not be carried over to the following year and two years' home leave or vacation may not be taken consecutively.

B. The Company encourages foreign service employees to take a home leave annually. To enable him to do so the company will provide economy class air transportation for the employee, spouse and unmarried dependent children under 21 years of age who reside with the employee, to employee's point of origin in the home country and return to the foreign location. With approval of the appropriate officer, the employee may take his home leave outside of the home country in which event he will be reimbursed for an amount not to exceed the cost of transportation to employee's point of origin in the home country and return. He must submit invoices or receipts for air fare and other expenses adequate to pass inspection by the Internal Revenue Service.

SECTION 7—SHIPMENT OF HOUSEHOLD EFFECTS AND RELOCATION ALLOWANCE

A. The Company recognizes that an employee incurs certain expenses in addition to actual moving expenses when transferred from the home country to a foreign location or from one foreign location to another. Because it is difficult to itemize such expenses or determine a realistic maximum, an allowance will be made in the total cost of moving household effects.

B. The Company will pay the employee for:

1) The cost of transporting his household effects from point of origin to the foreign location (or from one foreign location to another).

2) The cost of transporting one automobile from point of origin to foreign location (or from one foreign location to another).

3) The cost of incidental expenses not to exceed $2,500.

4) The customs duty on household effects, but not on an automobile.

C. If there is a period, after arriving at a foreign location, during which the employee and family must live in temporary quarters, the Company will pay the employee a per diem allowance of $50.00 per day for employee and wife plus $15.00 per day for each unmarried, dependent child under 21 years of age for a period not exceeding 60 days to help defray the cost of living in temporary quarters in excess of ordinary costs of living.

SECTION 8—TRANSPORTATION

A. The Company will provide economy class air transportation via the most direct route from the point of origin to foreign location for the relocating employee, spouse and unmarried, dependent children under 21 years

of age who will reside with the employee at the foreign location. Appropriate stopovers and allowances will be provided based on air transportation.

B. If the foreign service employee has unmarried children attending college, one round trip economy class will be provided per year, not to exceed cost of economy round trip fare between point of origin and foreign location. (Restricted to four trips per child.)

SECTION 9—SOCIAL SECURITY AND HOSPITALIZATION

A. The foreign service employee will be covered for social security for the maximum amount allowable. The Company and the foreign service employee will each pay their respective shares.

B. The foreign service employee will be covered for hospitalization, if he desires, on the same basis as Home Office employees, subject however, to the insurance company's policy regarding payment of claims in foreign countries.

C. If a foreign service employee is an employee of a foreign subsidiary and therefore not subject to payroll deduction by Master Builders Division, he will be required to reimburse the Company for his share of social security and hospitalization.

Mr. E. L. Ullman R. G. Ahrens August 6, 1974

REVISION TO ORGANIZATION
AND POLICY MANUAL

Dear Ed:

By the attached copy of my letter to Mr. Kelly dated July 31, 1974, you will note that he has agreed to revise Part XIV—Section 6—Paragraph B, which relates to the vacation home leave of foreign service employees.

Will you please have the Organization and Policy Manual changed accordingly and please note that this revision should be made effective July 1, 1974.

Very truly yours,

R. G. AHRENS
Vice President—Finance

RGA: rjm

Attach.

MASTER BUILDERS
Cleveland, Ohio 44118

INTER-OFFICE CORRESPONDENCE

Date July 31, 1974

To Mr. T. M. Kelly From R. G. Ahrens

Office Office

Subject ORGANIZATION AND POLICY MANUAL—PART XIV—SECTION 6—VACATION HOME LEAVE OF FOREIGN SERVICE EMPLOYEES

Dear Tom:

Paragraph B of the subject section states in part that the company will provide economy class air transportation for the employee, spouse and unmarried dependent children under 21 years of age who reside with the employee, to employee's point of origin in the home country and return to the foreign location. It further provides that with appropriate officer's approval the employee may be permitted to take his home leave outside of the home country, in which event reimbursement will be provided for actual economy air transportation, not to exceed the cost of transportation to his home town.

This paragraph has been a point of irritation and I believe justifiably so, in that when an employee takes a vacation other than in his home country, he believes he should be reimbursed for the cost of air transportation to his home country. Since this would incur no additional expense to the company, I recommend that paragraph B be revised to read as follows:

> "B. The company encourages foreign service employees to take a home leave annually. To enable him to do so the company will provide economy class

air transportation for the employees, spouse and unmarried dependent children under 21 years of age who reside with the employee, to employee's point of origin in the home country and return to the foreign location. With approval of the appropriate officer, the employee may take his home leave outside of the home country in which event he will be reimbursed for an amount not to exceed the cost of transportation to employee's point of origin in the home country and return. He must submit invoices or receipts adequate to pass inspection by the Internal Revenue Service."

Because we are already into the vacation period, I suggest this revision be made effective July 1, 1974.

Your approval is recommended.

Very truly yours,

/s/ R. G. Ahrens
R. G. AHRENS
Vice President—Finance

RGA:rjm
cc: P.W. Zhun, G. J. Tazelaar

Approved: /s/ T. M. Kelly
T. M. KELLY, President

[SEAL] products for improving concrete . . . manufactured, marketed and serviced worldwide

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 84-3387

Judge Aldrich

RONALDO P. RODRIGUES,
Plaintiff,

v.

MARTIN MARIETTA CORPORATION
MASTER BUILDERS DIVISION, *et al.*,
Defendants.

AFFIDAVIT OF RAYMOND E. NIZNIK

STATE OF MARYLAND)
) ss:
COUNTY OF MONTGOMERY)

Raymond E. Niznik, being first duly sworn, deposes and says:

1. I am Director, Employee Benefits for the Martin Marietta Corporation.

2. I am a member of the Administrative Committee of the Martin Marietta Pension Plan for Salaried Employees (the "Plan").

3. In 1975 and 1976, salaried employees of Martin Marietta Corporation's Master Builders Division were covered by the Plan. Plaintiff Ronaldo Rodrigues properly received credit under the Plan for his service for the period of time that he was employed by Martin Marietta Corporation's Master Builders Division (October 27, 1975 through June 15, 1976).

4. Neither Rioquima nor Master Builders do Brasil is or has ever been an "Employing Company" under the Plan. Therefore employees of Rioquima and/or Master Builders do Brasil do not receive credit under the Plan for their service with Rioquima or Master Builders do Brasil.

5. Under the terms of the Plan, the Brazilian employment of Ronaldo P. Rodrigues is not and should not be taken into account in determining his eligibility for benefits under the Plan.

6. Ronaldo P. Rodriguez has not been designated by a Plan participant as a beneficiary nor is he entitled to benefits as a result of the death of a participant.

7. Ronaldo P. Rodrigues does not have any right to vested deferred benefits under the Plan.

8. Neither Marge I. Tyson nor Tom Beggs is or ever has been the Plan Administrator.

9. In August of 1984, when plaintiff requested information about his eligibility for benefits under the Plan, the Plan had approximately 2,752 participants. The Administrator does not respond to all requests for information personally and is not precluded from making informal delegations of administrative responsibility with respect to providing requested information under the Plan.

Further affiant sayeth not.

/s/ Raymond E. Niznik
RAYMOND E. NIZNIK